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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

NO. ~~588~~ 33

LOCAL UNION NO. 25 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and the following, as individuals and representatives of said Local Union No. 25 of Boston, Massachusetts: EDWARD F. JENKINS, MICHAEL J. NORTON and WILLIAM J. McCARTHY,

Petitioners,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Respondent.

Petition for Writ of Certiorari to the Superior Court of the Commonwealth of Massachusetts

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To the Honorable the Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the decree of the Superior Court of the Commonwealth of Massachusetts ordered by Rescript of the Supreme Judicial Court of Massachusetts entered November 17, 1954 in the case there entitled *New York, New Haven and Hartford Railroad Company* v. *Edward F. Jenkins and others.*

Opinion Below

An opinion was entered by the Supreme Judicial Court of Massachusetts on November 17, 1954, and is reported in 1954 Massachusetts Advance Sheets 827, 122 N.E. 2d. 759.

Jurisdiction

The Rescript of the Supreme Judicial Court of Massachusetts was entered on November 17, 1954. It ordered a modification of the decree (R. 323) of the Superior Court, and affirmed that decree as modified.[1]

The jurisdiction of this Court is invoked under 28 U.S.C. s. 1257 (3).

The writ is sought to be directed to the Superior Court, and not to the Supreme Judicial Court because, under the Massachusetts Statute[2] and practice, only questions of law are brought before the Supreme Judicial Court, the record and decree remaining in the Superior Court. In this case, in accordance with its usual practice, the Supreme Judicial Court did not remove the record from the Superior Court.

Questions Presented

1. Does the Labor Management Relations Act oust State courts of jurisdiction of a suit by a railroad to enjoin a union and union representatives from engaging in peaceably conducted strikes or attempts to induce such strikes by the employees of interstate motor carriers for the purpose of persuading such carriers to agree to restrict their use of interstate railroad transportation facilities and to give some portion of such interstate carriage work to their employees who are all represented by the union?

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[1] Although the Superior Court has not yet entered a decree pursuant to the Rescript, this application for review to be timely must be filed within ninety days of the date of the Rescript. *Cole* v. *Violette*, 319 U.S. 581. The Rescript is printed, Appendix, post p. 34.

[2] Mass. General Laws (Ter. Ed.) Ch. 211, s. 8.

2. Does the Labor Management Relations Act oust State courts of jurisdiction of a suit by a railroad to enjoin a union and union representatives from peaceably inducing employees of interstate motor carriers, one of which is a subsidiary of the railroad, to refuse to handle and deliver to the railroad trailers prepared for shipment in interstate commerce by railroad, with the purpose of compelling the railroad and its subsidiary to cease doing business with the other motor carriers by handling and transporting such trailers in interstate commerce by railroad, or of compelling the other motor carriers to cease doing business with the railroad by delivering their trailers to the railroad for interstate rail transportation?

Constitutional and Statutory Provisions Involved

The Constitutional provision involved is Article VI, Clause 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The statutory provisions involved are Sections 2 (1), 2 (2), 7, 8 (a) (1), 8 (a) (5), 8 (b) (3), 8 (b) (4) (A), 8 (b) (4) (D), 8 (d) (1), 8 (d) (4), 10 (a) and 10 (1) of the Labor Management Relations Act, 61 Stat. 136, 29 U.S.C. 151 et seq. They are printed in the appendix, post.

Statement of the Case

The respondent Railroad Company is a common carrier by rail, subject to the Interstate Commerce Act and to the Railway Labor Act.[3] Since about 1937, its operations

[3] It is, thus, not an "employer" within the definition of Section 2 (2) of the Labor Management Relations Act, although it may be a "person" within the definition of Section 2 (1).

have included that of hauling on flat cars loaded trailers of the type ordinarily hauled over the highways by motor trucks. This operation is known in the trade and popularly as "piggy-backing." This operation is carried on between Boston and New York, between Providence and New York, between Boston and New Haven, and between Springfield (Massachusetts) and New York, and at times from New Haven to New York. (R. 56).[1]

The petitioner Union is the collective bargaining representative of drivers and helpers employed by motor carriers in the Boston area, and has collective bargaining agreements with motor carriers who operate out of the Boston area. (R. 129). The Union does not represent any of the employees of the respondent Railroad. (R. 130). The individual petitioners are officers and business agents of the petitioner Union who were joined as defendants below.

The process of "piggy-backing" in the Boston area is accomplished by having loaded trailers, owned by the motor carriers, delivered by motor trucks, operated by employees of the carriers, at a freight yard of the respondent. There the trailers are driven, by mechanical devices, by employees of New England Transportation Co. on to specially designed flat cars of the respondent. The trailers are then lashed and secured to the flat cars by employees of the respondent.

New England Transportation Co. is a subsidiary of the respondent. It is a motor carrier, whose employees are members of the petitioner Union, and it has a collective bargaining agreement with the Union similar to the agree-

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[1] The respondent's investment in the equipment for this service is in excess of $3,000,000, and its receipts for the year 1951 were approximately $1,000,000.

ments between the Union and other motor carriers in the Boston area.

For some years the petitioner Union had been disturbed about "piggy-backing," because it felt that the practice diminished the opportunities of its members for employment in over-the-road hauling of trailers between Boston and New Haven and between Boston and New York. During the negotiation of collective bargaining agreements with the motor carriers in 1946, and again in 1949, the Union made formal demands that the carriers cease to ship any trailers by "piggy-back" and carry all their freight over the road. (R. 132, 134, 206, 209). These demands were refused, and the contracts, when made, did not contain agreements in the terms demanded by the Union. (R. 133, 135, 207, 209). After the contracts were made, in 1946, and in 1949, informal discussions and negotiations continued between the Union and the carriers with respect to the discontinuance, by the carriers, of the practice of "piggy-backing," or, in the alternative, a reduction of the volume of "piggy-backing" so as to bring about an increase of the volume of over-the-road trucking. (R. 143, 148-152, 168-169, 212-214, 216-218, 222, 268, 280, 283). These negotiations and discussions were not fruitful.

There were also negotiations and discussions over the issue whether the use, by carriers, of "piggy-backing" constituted violation of the contract provision which restricted the carriers in the leasing of "other equipment" when they have available equipment of their own. (R. 135-137, 173-176, 181).

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[5] The opinion of the Court below (1954 Mass. Adv. Sh. at 830, Appendix, post, p. 22) states: "The New England Transportation Co., a corporation, hereinafter called New England, is a "subsidiary" of the railroad. Nothing more definite of its relationship to the railroad appears." The opinion does not advert to the evidence that New England is a motor carrier (R. 153; 154; 170; 178; 298) nor to the statement in the record (R. 34) that New England is subject to the jurisdiction of the National Labor Relations Board. (See, *New England Transportation Co.*, 1 N.L.R.B. 130).

Petitioners Norton and McCarthy, as business agents of the Union, had been assigned to "cover" that part of the City of Boston which includes Yard 5 of the respondent Railroad, where the respondent receives trailers to be carried in its "piggy-back" operations. On July 11, 12 and 14, 1952, these petitioners, standing near Yard 5,[6] stopped a number of truck-drawn trailers owned by carriers with whom the Union had collective bargaining agreements and bound for Yard 5 to be placed on flat cars for "piggy-back" transportation, and by word and signal persuaded the drivers not to deliver the trailers at Yard 5, but to turn back. (R. 58, 68, 79, 83, 89, 171). They also persuaded the employees of New England Transportation Co. working at Yard 5 not to load the trailers of these carriers on to flat cars for "piggy-back" transportation. (R. 58, 76, 85, 88, 90).[7]

On July 15, 1952, the respondent filed a bill in equity (R. 1) against the petitioners, seeking injunctive relief and damages. The Court, *ex parte* issued a restraining order (R. 6) granting the first two prayers of the bill (R. 5) and forbidding the petitioners to induce, threaten or hinder any person from delivering trailers to the respondent, or to picket or patrol the premises of the respondent "or in any other way to interfere with or prevent the loading or unloading of freight of any kind or nature or description from or to semi-trailers, flat cars, box cars or other transportation equipment used and employed by the plaintiff."

The following day, July 15, 1952, the petitioners moved

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[6] On one occasion, for a brief interval of time, one of the petitioners walked on to the respondent's premises. (R. 113). This technical trespass was not relied upon by counsel in argument, nor was it considered significant by either of the courts below.

[7] There is no evidence in the record nor has there been any assertion of persuasion or coercion addressed to employees of the respondent, nor of any strike activity on their part. The opinion of the Court below (1954 Mass. Adv. Sh. at 835, appendix, post, p. 28) expressly states: "All parties agree that there was no dispute between the railroad and the union."

for dissolution of the temporary restraining order. (R. 6). A hearing on this motion and on the continuance of the restraining order was held and evidence taken on July 24 and 25, 1952. (R. 24-156). On July 30, 1952, the Court "found and ruled" that it had jurisdiction of the case and ordered the injunction continued in force until otherwise ordered. (R. 7). On August 4, 1952, the petitioners moved for modification and amendment of the restraining order and injunction, and on August 8, 1952 this motion was denied. (R. 8).

On August 15, 1952, the trial Court reported to a single justice of the Supreme Judicial Court the material facts (R. 9) upon which it based its denial of the motion to dissolve the preliminary injunction and a report of questions of law (R. 186) including the question, "Does this court have jurisdiction of the action?" On September 30, 1952, after argument, the single justice of the Supreme Judicial Court affirmed the order of the Superior Court, "which is in essence and substance an interlocutory decree of preliminary injunction." (R. 187).

Meanwhile, on July 25, 1952 the Court had allowed (R. 11) a motion for leave to file a substitute bill of complaint (R. 12). Subsequently, on January 15, 1953 the respondent moved (R. 188) to file an amended substitute bill (R. 189) which was allowed on January 23, 1953 (R. 198). On January 26, 1953, the petitioners filed a demurrer and an answer to the amended substitute bill (R. 199). On March 2, 1953, the demurrer was overruled.

The petitioners duly took interlocutory appeals from or exceptions to the various adverse rulings of the Court. (R. 21, 188, 204).

On March 2, 1953 the final hearing was had and further evidence taken (R. 205 - 318) it being stipulated (R. 205) that the evidence taken at the earlier hearing be made a part of the record.

On March 16, 1953 the petitioners filed and the Court denied requests for rulings of law (R. 318), and the Court made a report of material facts and an order for a decree. On March 26, 1953 the Court entered its final decree (R. 323), enjoining the petitioners and awarding damages against them, and on April 14, 1953, the petitioners filed their appeal from the final decree and from the denial of the request for rulings of law. (R. 324). The appeals were heard in the Supreme Judicial Court February 2, 1954, and on November 17, 1954 that Court issued its rescript (Appendix, post, p. 34) affirming the injunctive portion of the decree, and modifying the assessment of damages so that it would run against the petitioners, Norton and McCarthy, instead of against the petitioners generally.

Federal Questions in the Courts Below

1. Throughout the proceedings below, both before the trial court and on appeal, the petitioners contended that their activities were within the protection of Section 7 of the Labor Management Relations Act:

a) In their answer (R. 202) they allege that "all of their activities were in furtherance of their aims in a lawful labor dispute between the * * * Union and various Employers (motor carriers) * * *;" (par. 18); that "* * * all of their activities are within the protection of Sections 7 and 8, subsections (a) (1) and (5) of the National Labor Relations Act * * *;" (par. 20); "* * * that none of their activities were directed at or to [the Railroad] or any of its agents or employees * * *;" (par 21); "* * * that the object of all their activities was to require the various Employers (motor carriers) to perform their collective bargaining agreements and/or to bargain collectively in good faith under the National Labor Relations Act * * *." (par. 22).

b) The same contention was made in support of the demurrer (R. 199) to the bill, which was overruled (R. 204).

c) The same contention was made in the reported argument of counsel at the hearing on the preliminary injunction. (R. 37). The contention was impliedly rejected, when the Court continued the injunction in force. (R. 7).

d) The contention was renewed by brief and oral argument before the Supreme Judicial Court on appeal. That Court did not, so far as is revealed by its opinion, specifically consider the contention. While recognizing (1954 Mass. Adv. Sh. at 828, Appendix, post, p. 20) that, "We can find for ourselves facts in addition to those found by the trial judge and facts contrary to those found by him if we are convinced that his findings are plainly wrong," the Court paid scant attention to the evidence of the discussions and negotiations. (ante, p. 5) between the Union and the carriers in its review of the trial judge's findings (R. 321, 322) that the object of the Union activity was to force the carriers to cease doing business with the Railroad, and to force the Railroad to cease doing business with the carriers. The Court speculated, of these negotiations: "They may have been undertaken by these representatives of the union to alleviate the tension within the union created by members who for some time had been insisting that rail transportation of trailers * * * should be stopped or at least restricted." (1954 Mass. Adv. Sh. at 829, Appendix, post, p. 21). This, notwithstanding the Court's further statement (1954 Mass. Adv. Sh. at 835, Appendix, post, p. 28): "All parties agree that there was no dispute between the railroad and the union, and the case was presented and tried upon that basis." This latter proposition is well documented in the record. (R. 147, 169, 171, 179, 240).

2. The petitioners did not contend, as suggested in the opinion below,[8] that their activity constituted an unlawful secondary boycott. The contention of the petitioners was that the original bill of complaint (R. 4, par. 17) and the

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[8] "The Union upon the facts found urges that it has engaged in a secondary boycott against the railroad in violation of s. 158 (b) (4) (A) of said Title 29." (1954 Mass. Adv. Sh. at 831, Appendix, post, p. 23).

amended substitute bill of complaint (R. 193, par. 12) showed on their face that the subject matter of the complaint was not within the jurisdiction of the State Court, because they set forth statutory unfair labor practices, as to which the Act confers exclusive primary jurisdiction upon the National Labor Relations Board.

a) This contention was made in the requests for rulings (R. 20) submitted after the hearing on the preliminary injunction: "It having been alleged in the complaint that unfair labor practices within the meaning of the National Labor Relations Act have been committed * * * that Act vests the National Labor Relations Board with exclusive primary jurisdiction to determine how much of this peaceful concerted activity shall be prohibited by injunction;" (par. 2); "Said concerted activities are in the field covered by the * * Act, and are therefore preempted and closed to State regulation;" (par. 3); "This Court is without jurisdiction to enjoin said concerted activities and its action in so doing would invade and infringe the exclusive federal field which the * * * Act preempts, and would infringe upon the exclusive jurisdiction of the * * * Board * * *." (par. 4). The Court denied these requests. (R. 21).

b) The same contention was made in counsel's reported argument at the hearing on a preliminary injunction. (R. 25 - 34): "* * * the activities which the plaintiffs seek to proscribe come within the exclusive jurisdiction and purview of * * * the so-called Taft-Hartley Act. * * * The proper forum for presentation of the plaintiff's cause is the National Labor Relations Board. * * * I call the Court's attention to Section 10 (a) of the aforementioned Taft-Hartley Act, which reads as follows: * * *" The Court impliedly rejected the contention by ordering the injunction continued in force. (R. 7).

c) The contention was also made in support of the demurrer (R. 199) to the bill, which was overruled. (R. 204).

d) The contention was made again in requests for rulings after the final hearing. (R. 318-319). These were in substantially the same language as the earlier requests (see (a), above). The Court denied the requests. (R. 320).

e) In brief and oral argument before the Supreme Judicial Court on appeal, the contention was renewed in the light, not only of the allegations of the bill, but also of the findings of the trial judge (R. 321, 322) that the petitioners had caused to occur a concerted cessation of work with the objects of forcing the motor carriers to cease doing business with the respondent and of forcing the respondent to cease doing business with the motor carriers. The Court below, in its opinion,[9] recognized the validity of the contention as an abstract proposition, but it considered no more than tangentially its applicability to the facts of the case.

The opinion inquires whether the respondent Railroad could obtain relief through a charge filed with the National Labor Relations Board, cites a Fifth Circuit decision[10] indicating an affirmative answer to the question, speculates as to the present attitude of the Labor Board and concludes that, "until we are more positively directed to the contrary, we doubt that the railroad could obtain a remedy by filing a charge under L.M.R.A."[11] The opinion then proceeds gratuitously[12] to consider the question whether the Railway Labor Act ousts the State courts of jurisdiction, inquires whether the exclusive primary administrative jur-

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[9] "... a bill of complaint brought for an injunction and based on a violation of s. 158(b)(4) cannot be maintained by the railroad in its own behalf. It is settled that neither a Federal nor a State court has jurisdiction to restrain the commission of an unfair labor practice affecting commerce in proceedings begun in court by the injured party. [Citations]." (1954 Mass. Adv. Sh. at 832, appendix, post, p. 24).

[10] *International Rice Milling Co., Inc.* v. *N.L.R.B.*, 183 F. 2d 21, 25, reversed on other grounds, 341 U.S. 665.

[11] 1954 Mass. Adv. Sh. at 833; Appendix, post, p. 26.

[12] No contentions were raised by either side under the Railway Labor Act.

isdiction established by the Act for railroad labor disputes[13] is applicable or if some exception to that rule is germane, and comes to the conclusion that the Railway Labor Act has nothing to do with the case. Since the Railroad[14] was not a party to any controversy, there is no Railway Labor Act dispute, and the conduct of the petitioners, under the findings of the trial judge,[15] amounts to a secondary boycott, which is unlawful, and under the State law, enjoinable by the State court.

Reasons for Granting the Writ

1. The decision below, being based on the assumption that the respondent Railroad had no standing to file unfair labor practice charges with the National Labor Relations Board, is inconsistent with the decision on that point of the Fifth Circuit in *International Rice Milling Co.* v. *NLRB*, 183 F. 2d. 21, 25; reversed on other grounds, 341 U.S. 665. Furthermore, the Court below, in making that assumption, did so without the "clear showing that respondent has applied to the National Labor Relations Board for appropriate relief, or that it would be futile to do so," required by this Court in *Building Trades Council* v. *Kinard Construction Co.*, 346 U.S. 933.

2. The Court below, in deciding that a State court may have jurisdiction, at the suit of a party without standing to file unfair labor practice charges with the National Labor

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[13] The record is barren of any evidence of involvement of railroad employees.

[14] The opinion, at 1954 Mass. Adv. Sh. 835 (Appendix, post p. 27) seems to suggest an identity of the respondent and New England Transportation Co.: "Neither the railroad nor New England was a party to any controversy between the union and the motor carriers." Compare Note 5, *supra*.

[15] R. 323: "I find that this suit does not involve or grow out of a labor dispute as the term "labor dispute" is defined in Chapter 149 Section 20C of the General Laws (Ter. Ed.). • • •

"If there was a labor dispute I find that the objective and the means used were unlawful and that the union was guilty of an unlawful secondary boycott."

Relations Board (although it would lack jurisdiction at the suit of a party having such standing, and there were in existence parties having such standing[16]) of suits to enjoin conduct which is, actually or colorably, either within the protection of Section 7, or an unfair labor practice under Section 8 (b) (4) (A) of the Labor Management Relations Act, ruled upon a point not reached by this Court in *Garner* v. *Teamsters Union*, 346 U.S. 485, or in any other case, which point is an important one in the interpretation and administration of the Labor Management Relations Act.

3. The questions presented involve serious problems of the sort which have arisen and will continue to arise out of the competition and interaction between Railway Labor Act employers and Taft-Hartley Act employers as they impinge upon employees of the latter with respect to the extent to which Taft-Hartley Act employees are entitled by law to bargain and to exercise sanctions in protection of the continuance of their normal work opportunities. Whether the particular subjects on which these employees seek to bargain, or the methods and means which they would use to further their objectives are within the protection of the National law or are governed by the refinements of the tort law of the several States is a matter of profound national importance. In this light, this case presents[17] the necessity (in the absence of clarifying legislation by the Congress) of this Court giving to the courts of the several States more detailed criteria by which they are

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[16] It is clear on the record that New England would have had standing to charge (whether successfully or not) violation of Section 8 (b) (4) (A), in which case, if the charge were administratively thought to be well founded, application to a federal court for an injunction would have been mandatory under Section 10 (1). It is equally clear that the other motor carriers would have had standing to charge violations of Sections 8(b)(4)(A), 8(b)(4)(D) or (8b)(3) (cf. Sections 8(d)(1), 8(d)(4), *Local No. 3* v. *N.L.R.B.*, 210 F. 2d 325; cert. den. 348 U.S. 822).

[17] Note the disposition of the federal questions presented, *ante*, following Statement of the Case.

to scrutinize and evaluate claims of federal right asserted before them by employees in the name of National law.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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